

A. G. Contract No. KR96-1208-TRN  
ADOT ECS File: JPA 96-72  
Project: RRP-STP-799-9(4)P  
TRACS: SR043 01C  
Section: Van Buren W/O 19th Ave.  
AAR/DOT No. 025-438-L

77187

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INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PHOENIX

THIS AGREEMENT is entered into January 31, 1997,  
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-  
954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") the CITY  
OF PHOENIX acting by and through its MAYOR and CITY COUNCIL (the  
"City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 and 28-112 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The City is empowered by Arizona Revised Statutes  
Section 48-572 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has authorized  
the undersigned to execute this agreement on behalf of the City.

3. The Arizona Corporation Commission is empowered by  
Arizona Revised Statutes Section 40-337 to participate in the  
funding of this project, and has authorized funds for this  
project.

4. Congress has authorized appropriations for the erection  
of automatic warning signals, automatic gate arms, plank  
crossings, pavement markings, and other appurtenances.

NO. <u>2/335</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>01/31/97</u>
<u>James H. Ford</u> Secretary of State
By <u>Vicky Haenewald</u>

5. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows: Upgrade Railroad Crossing

Preliminary and Construction Engineering	\$ 3,000.00
Furnish and Install Flashing Lights and Cantilevers (by railroad forces)	\$ 169,982.00
Total Protection Work	\$ 172,982.00
Furnish and Install Rubber Crossing Surface (by railroad forces)	\$ 66,896.00
Approach Roadway Work (by Phoenix forces)	\$ 25,721.00
Federal Aid Funds @ 90% of \$3,000.00	\$ 2,700.00
Federal Aid Funds @ 94.3% of \$262,599.00	\$ 247,631.00
AZ Corp. Comm. Funds @ 10% of \$3,000.00	\$ 300.00
AZ Corp. Comm. Funds @ 5.7% of \$169,982.00	\$ 9,689.00
City Funds @ 5.7% of \$169,982.00	\$ 5,279.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the federal funds.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. The City shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the City shall remove from the City right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the City right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

5. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The City shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the City.

7. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the City for the benefit of the State in no way acts as a waiver by the City for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage

incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the City agrees to furnish and provide the State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Room 222E, Mail Drop 616E  
Phoenix, AZ 85007

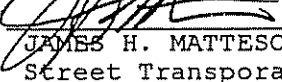
City of Phoenix  
Street Transportation Director  
125 E. Washington Street  
Phoenix, AZ 85003


9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

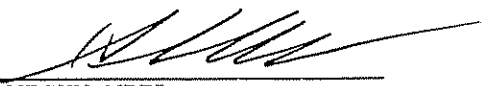
CITY OF PHOENIX, A Municipal  
Corporation, FRANK FAIRBANKS,  
City Manager

STATE OF ARIZONA  
Department of Transportation

By   
JAMES H. MATTESON, P.E.  
Street Transportation Director

By   
PETER L. ENO  
Contract Administrator


ATTEST:

By   
ACTING FOR VICKY MIEL  
City Clerk

RESOLUTION

BE IT RESOLVED on this 17th day of June 1996, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Phoenix for the purpose of defining responsibilities to design, construct and maintain improvements to the ATSF railroad on Van Buren Street west of 19th Avenue.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

  
for LARRY S. BONINE  
Director

*Street*

RESOLUTION NO. 18833

A RESOLUTION AUTHORIZING AN AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO THE RAILROAD CROSSINGS AT 19TH AVENUE AND VAN BUREN STREET; FURTHER AUTHORIZING THE CITY TO PROVIDE RIGHT-OF-WAY AT NO COST TO THE STATE; AND FURTHER AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS IN AN AMOUNT NOT TO EXCEED \$5,279 FOR PURPOSES OF THIS AGREEMENT.

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NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That the City Manager be, and is hereby authorized, to enter into an Agreement with the Arizona Department of Transportation for improvements to the railroad crossing at 19th Avenue and Van Buren Street.

SECTION 2. Further authorizing that the City to provide right of way at no cost to the State.

SECTION 3. Further authorizing that the City Controller disburse funds in an amount not to exceed \$5,279 for purposes of this Agreement.

APPROVAL OF THE PHOENIX CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 28th day of October, 1996.

Michael D. Hester  
ACTING  
City Attorney





GRANT WOODS  
ATTORNEY GENERAL

STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
1275 WEST WASHINGTON, PHOENIX 85007-2926

TRN Main: (602) 542-1680  
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Fax: (602) 542-3646  
MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR96-1208TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED January 25, 1997.

GRANT WOODS  
Attorney General

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section